



US Army Corps
of Engineers

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 27837S – Kirby Canyon Landfill

DATE: June 20, 2003

RESPONSE REQUIRED BY: July 25, 2003

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1. INTRODUCTION: Waste Management of California, Inc., 910 Coyote Creek Golf Drive, Morgan Hill, California, 95037 [Attn: Mr. Joe Morse, (510) 627-1559], has applied for a Department of the Army permit to fill wetlands and waters of the United States to develop landfill space at the Kirby Canyon Recycling and Disposal Facility, east of Highway 101 and approximately seven miles south of the City of San Jose, in Santa Clara County, California (Figures 1 and 2). This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. PROJECT PURPOSE & DESCRIPTION:

The proposed expansion of the Kirby Canyon Recycling and Disposal Facility (KCRDF) will result in the development of 226 acres for landfill purposes, which will augment the approximately 100 acres that have been filled to date. The KCRDF is an active Class III landfill that has been operating since 1986, and it can accept non-hazardous decomposable waste only. The expansion is projected to extend the life of the Facility until approximately the year 2050. The KCRDF functions as the primary landfill repository for the City of San Jose.

The 827 acre landfill facility presently contains approximately 4.97 acres of waters of the U.S., including 2.08 acres of un-vegetated seasonal

streams, 1.46 acres of vegetated perennial streams, 0.24 acre of adjacent wetlands, and 1.19 acres of waters associated with the mitigation requirements of previously permitted fill activities (0.44 acre mitigation pond, 0.75 acre mitigation wetland).

As shown in the attached drawings, the applicant proposes to fill 16,643 linear feet of streams, of which 1.28 acres are un-vegetated seasonal streams, and 0.53 acre are vegetated perennial streams. An additional 0.05 acre of adjacent wetlands will also be filled, resulting in the total fill of 1.86 acres of U.S. waters within the 226-acre site (Figure 3, watercourses B and F).

The unnamed watercourses within the Kirby Canyon Facility drain into Coyote Creek, which flows north through urban San Jose before emptying into San Francisco Bay.

Federally threatened and endangered species are present at the KCRDF site. Federally threatened California Red-legged frogs (*Rana aurora draytonii*) are known to occur on and around the landfill site, which contains suitable breeding, foraging, and dispersal habitat for the frog. The Federally threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) occurs at the site in conjunction with serpentine soils and host plant species that serve as larval food sources (California plantain, Owl's clover). The Federally endangered Santa Clara

Valley Dudleya (*Dudleya setchellii*) is found in abundance among the serpentine outcrops at the landfill site. In addition, a Federal Species of special concern, the Bell's sage sparrow (*Amphispiza belli belli*) is found year-round within the project area.

The effects of habitat loss and fragmentation are particularly acute for the Bay checkerspot butterfly and Santa Clara Valley Dudleya, and this project will have a considerable cumulative impact upon these species and their prospect for long-term survival due to the permanent loss of habitat. The KCRDF is within the designated Critical Habitat Unit 8 for the Bay checkerspot butterfly. This Unit supports one of the largest populations of this endangered species. The proposed 226-acre KCRDF expansion site represents almost one percent of the remaining critical habitat of this species.

Landfill Configuration and Operations: The natural canyon topography of the site is steep, and landfill activities will range from 450 feet above mean sea level (MSL) to 1,300 feet above MSL, resulting in the entire filling of all canyons within the landfill footprint. The fill process will result in the elimination of all waters of the U.S. as well as the primary source of the waters (the runoff from the hillside topography). As such, the project design will permanently impact all 16,643 linear feet of streams and adjacent wetlands within the 226-acre site.

The currently intact drainages will be excavated and filled with soil and refuse. Following topsoil stripping and streambed removal, layers of clay and geosynthetic material will be placed below the refuse to prevent contaminants associated with refuse from mixing with groundwater. Water flowing toward the landfill footprint from outside the footprint will be routed around the landfill by stormwater control facilities and diverted to sedimentation basins before its eventual release into Coyote Creek.

The landfill is divided into discrete geographic units (Fill Areas), and fill operations will be implemented sequentially among the Fill Areas (Figure 4). The remaining portions of Fill Area 1 will be developed first (Cells 3/4), followed by Fill Area 2 (filled by 2010), Fill Area 3 (2020), Fill Area 4 (2040), and lastly Fill area 5 (2050). Following completion, a Fill Area will be covered with a geomembrane liner system and a topsoil cap derived from on-site excavation of serpentine soils. Post closure maintenance will be performed for 30 years following landfill closure, and will include the inspection and maintenance of the final soil cover layer, the drainage system, the vegetation cover, the leachate control system, the gas monitoring network and control systems, and the groundwater monitoring network elements. A final grading will be done to prevent ponding and minimize water infiltration.

Vegetation Communities and Wildlife Habitats:

Approximately 170 acres of the landfill footprint consists of moderately steep hillside and canyon floor containing grasslands with small swales of seasonal wetland, riparian corridors, and chaparral slopes. Roughly 50 acres of oak woodland is found primarily in the easternmost portion of drainage F (Figure 3).

California Annual Grasslands: The grassland at Kirby Canyon is located on a thin layer of well-drained serpentine soil, which favors the establishment of native plant species that are adapted to nutrient poor soils. In addition to the dominant non-native annual rye-grass, a wide variety of native herbaceous species flourish, including needlegrasses, rock plantago, native onions, most beautiful jewelflower, owl's clovers, Santa Clara Valley Dudleya, small fescue, California poppy and California oatgrass, among others. This community type supports numerous wildlife species including Bay checkerspot butterfly, ground squirrel, coyote, black-tailed deer,

Western fence lizard, Western rattlesnake, golden eagle, red-tailed hawk, ferruginous hawk, American kestrel, prairie falcon, California horned lark, grasshopper sparrow, Western meadowlark, burrowing owl, tarantula, and California red-legged frog, among others.

Coast Live Oak Woodlands: Where topsoils are thicker, some of the canyons contain woodlands whose canopies are dominated by coast live oak. Other tree species associated with these stands include valley oak, scrub oak, and foothill pine. Shrub species present include California coffeeberry, toyon, chokecherry, manzanita, and sticky golden monkeyflower. Herbaceous species found associated with these woodlands include miner's lettuce, iris-leaved rush, and California polypody fern, among others. Native wildlife species associated with this community include those listed above, as well as Great horned owl, California quail, Northern flicker, Steller's jay, Western scrub jay, Oak titmouse, Bushtit, Bewick's wren, Rock wren, dark-eyed junco, wrentit, rufous-crowned sparrow, common raven, striped skunk, and Pacific tree frog, among others.

California sagebrush: These chaparral areas occur in a few isolated areas at the site on steep west or south facing slopes, and are dominated by stands of California sagebrush. Other shrub species include buckwheats, sticky golden monkeyflower, and coyote brush, among others. Wildlife associated with this community includes Western fence lizards, rattlesnakes, and multiple bird species.

Mt. Hamilton Thistle Community (Sedge Series): Three intermittent seep drainage areas on the Kirby Canyon site are dominated by Mt. Hamilton thistle, a California Native Plant Society (CNPS) List 1B (threatened) species. Other herbaceous wetland plant species associated with this series include sedge and rush species, including Saw-tooth sedge, iris-leaved rush, and monkeyflower. Shrubs found

in these drainages include California coffeeberry and blue elderberry.

3. PROPOSED MITIGATION: All mitigation would occur on-site (Figures 5, 6, and 7). The planned "North Area" wetland (Figure 5) is being proposed to mitigate for all impacts to aquatic and upland resources. This new wetland would consist of a 0.5 acre open pond, a 0.7 acre saturated herbaceous wetland for Mt. Hamilton thistle, and a 0.5 acre unsaturated upland vegetated habitat located mostly within the mitigation pond and partially along its fringe (Figures 6 and 7).

The pond is intended to additionally mitigate for impacts to California red-legged frogs, by providing habitat sufficient for breeding to occur.

The mitigation pond will be constructed by cut-and-fill grading to form shallow ponding areas that will be compacted to increase their ability to retain water. Berms will be constructed around the perimeter and within the mitigation area to impound water, and water control structures, including pipes, culverts, slidegates, and weirs, may be used to regulate water levels.

The constructed wetlands and upland areas will be populated with native plant species, using many of the species that existed on-site before development. The North Area wetland mitigation area will be protected in perpetuity with the establishment of a permanent conservation easement.

In summary, the mitigation plan proposes to:

1) compensate for the loss of 16,643 linear feet of streams (2/3rds of which are seasonal, 1/3 perennial) and 0.05 acre of adjacent wetlands through the creation of a 0.5 acre open pond and a 0.7 acre saturated wetland (resulting in the transformation of 1.86 acres of currently jurisdictional wetlands/waters into 1.2 acres of created jurisdictional wetlands/waters), and

2) compensate for the loss of 50 acres of mature oak woodlands through the creation of 0.5 acre of upland vegetated habitat adjacent to the mitigation pond.

The applicant has suggested an alternative mitigation site location should their proposed site turn out to be inappropriate (Figure 5).

4. STATE APPROVALS: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Regional Water Quality Board. No Corps permit will be granted until the applicant obtains the required certification. A waiver shall be deemed to have occurred if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period of this Public Notice.

5. COMPLIANCE WITH VARIOUS FEDERAL LAWS: The Corps will assess the environmental impacts of the action proposed in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), and pursuant to Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps of Engineers' Regulations, 33 CFR 230 and 325, Appendix B. The documents used in the preparation of the Biological Assessment will be on file in the Regulatory Branch, Corps of Engineers, 333 Market Street, San Francisco, California.

Endangered Species Act of 1973 (ESA): The project is located in the serpentine soil canyons of Santa Clara County, in which the following listed species occur: California Red-legged frogs (*Rana aurora draytonii*), Bay checkerspot butterfly (*Euphydryas editha bayensis*), and Santa Clara Valley Dudleya (*Dudleya setchellii*). Therefore, the Corps has initiated Section 7 formal consultation with the U.S. Fish & Wildlife Service to avoid any adverse effects to these listed species as a result of permitted landfill activities.

National Historic Preservation Act of 1966 (NHPA): A Corps archaeologist will be requested to conduct a cultural resources assessment of the permit area, involving a review of published and unpublished data on file with city, State and Federal agencies. If, based on assessment results, a field investigation of the permit area is warranted, and cultural properties listed or eligible for listing on the National Register of Historic Places are identified during the inspection, the Corps will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

6. EVALUATION OF ALTERNATIVES:

Evaluation of this activity's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. 1344(b)). An evaluation was made by this office under the 404(b)(1) guidelines and it was determined that the proposed project is not water/wetland dependent, since its purpose is to provide refuse storage. However, the applicant has submitted an Analysis of Alternatives for the project and it will be reviewed for compliance with the Guidelines in relation to the overall project purpose of constructing a public landfill. The applicant states that there are no practicable alternatives for this project. The Alternatives Analysis is available for review in our office.

7. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

8. SUBMISSION OF COMMENTS: The Corps is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps

to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

9. SUBMISSION OF COMMENTS: Interested parties may submit in writing any comments concerning this activity. Comments should include the applicant's name, the number, and the date of this Notice and should be forwarded so as to reach this office within the comment period specified on page one of this Notice. Comments should be sent to the Regulatory Branch. It is Corps policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose address is indicated in the first paragraph of this Notice, or by contacting Andrew Muss of our office at telephone 415-977-8442 or E-mail: andrew.j.muss@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided on request.